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MICHIGAN SUPREME COURT
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March 8,2004

RE: ADM. FILE No. 2003-4

To whom it may concern,

I am writing to you with regards to the Proposed Rule changes to Michigan Court Rule MCR 6.500 et. seq. Motion For Relief From Judgment. I am very concerned about the devastating impact these proposed changes will have on a persons ability to challenge the legality of their convictions and sentences. The initial adoption of MCR. 6.500 et. seq. on October 1,1989, severely impacted and changed the Appellate Process in this State, leaving many Lawyers and the Defendant's they represented at an extreme disadvantage and unable to effectively challenge their convictions and sentences after the time for Appeal had expired. Prior to this adoption many Lawyers did not bother with Briefing every issue found, trying to make their Briefs and Arguments as short as possible, opting instead to use a "Crystal Ball" approach to litigation. Wherein they would try to circumscribe the thoughts of the Appellate Court, assuming what claims they would consider. In many cases the issues which were not raised on Direct Appeal were the very ones which would have resulted in a reversal of the Defendant's conviction and sentence. Michigan Supreme Court Justice Levin pointed this out in his Dissenting Opinion in People v. Reed, 449 Mich. at 412-413.

It is a well known fact that MCR 6.500 et. seq. is probably the least ruled upon Court Rule dealing with Criminal Law in this State, and at the same time it is the most frequently used rule by Pro Per Litigants. The Court's have apparently recognized this fact, so they just completely ignore the Rule and refuse to rule upon its application. These rules are clearly geared towards Defendant's who are not represented by Counsel and who may not have any formal training in Law and the Legal System. But, as confusing as these rules are, people like me have been navigating through the process with no direction or clear guidance from the Court. Many of the provisions in the current rules have never received settled Judicial Interpretation from the Michigan Supreme Court, thus leaving them undefined. For example the current provision under MCR 6.508 (D)(3)(a) and (b), known as the "GOOD CAUSE" and "ACTUAL PREJUDICE" test, has yet to be defined by the Supreme Court in relation to a Motion under subchapter 6.500 et. seq., the same holds true for the "Actual Innocence" provision. Now a Proposal is being made to make an already complicated process even more difficult to figure out. Why has this become necessary at this point?

The proposed amendment under MCR 6.502(C), limiting the length of the Motions to 25 pages will result in people being prevented from effectively arguing the facts and issues in their cases. Such a limitation is unattainable for the unskilled and unlearned Pro Per Litigant. A persons final bid for freedom should not be limited in this manner, as the Motion under MCR 6.500 et. seq. is the final appeal where the mistakes of both Trial and Appellate Counsel are presented. It can take up to 5-7 pages using Double Space Type for the average person to provide the preliminary information required under the rule.

How is someone without the skills and expertise of a Lawyer supposed to present a coherent argument raising numerous Trial and Appeal related errors in 20 pages? A skilled Attorney would be hard pressed to accomplish this feat if they are truly advocating for their client. There are instances where the 50 page Brief limit has hampered a Criminal Appellate Attorneys' preparing an Appellant's Brief on Direct Appeal. There should be little room for doubt that it will seriously impact a Pro Per Litigant in a proceeding such as this, where it is their last attempt at freedom.

In my personal case for example, I filed a 30 page Motion and 50 page Brief In Support of the Motion, and a Supplemental Motion and 30 page Brief under MCR 6.500 et. seq. back in March 2001. The Wayne County Prosecutor in their response to my initial Motion filed a 60 page Answer, they did not respond to the Supplemental Motion. My case is still pending in the Circuit Court. [People v. Walter Miller, Wayne County Circuit Court No. 86-8310]. Now they are professional Attorney's but they still needed well over 25 pages to respond to my claims of error. This page limit provision will make the entire process a mockery of justice and the judicial system.

The proposed One (1) year limitation period set forth under MCR 6.508(E), does not take into consideration the level of knowledge and intellect the average Pro Per Litigant will have at that stage in the proceedings. The majority of Motions Filed under this Court Rules are not filed by Attorneys, but are filed in Pro Per. I know from my personal experience that there is no way I could have effectively filed a Motion For Relief From Judgment within the proposed One (1) Year time limit. It took me ten (10) years with no formal legal training to figure out how the judicial system worked. I had to teach myself what could and could not be done, and I had the advantage of being able to read, write and comprehend what the Courts' were saying, and it still took me ten years.

Has anyone taken into consideration the fact the 90% of the people who will be affected by these proposed changes are "Young Blackmen and Boys", many of whom are poor and uneducated and in some instances illiterate? For the Court to even consider cutting them off from the Legal System in this manner is no different than the Lynchings in the South. You are cutting off people who are already discouraged, disillusioned and disinfranchised, by putting them in the position where their only hope in the judicial process rest with the competency of an over worked and under paid State Appointed Attorney. The majority of persons incarcerated do not have the tools needed to understand and comprehend the law and legal system and the adoption of these rules will end any and all hope of those who are innocent, wrongly convicted or whose Constitutional Rights were violated, from ever being able to gain any relief in the Courts'. To place a limited period of time on them to figure out what their Attorney did wrong and how the entire criminal justice system works, is deplorable, inhumane and mean spirited to say the least.

In closing I just want to ask, that you seriously reconsider these proposed amendments, and don't just cut us off from access to the Courts'. Please leave at least one door open for those of us who cannot afford the best that money can by and are relying on ourselves to get the job done as best we can. Please don't leave us with no hope of ever getting a fair hearing in Court.

I am not sure whether anyone will read this letter or consider anything that I have said, but in any event, I want to thank you for your time.

SINCERELY

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